



UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office

Patent Cooperation Treaty  
Legal Office

Address: Assistant Commissioner for Patents  
Box PCT  
Washington, D.C. 20231

JUN 20 2000

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LETTONIE

In re Application of	:	
MATASOV, et al.	:	
U.S. Application No.: 09/509,377	:	
PCT No.: PCT/LV98/00006	:	COMMUNICATION AND
International Filing Date: 2 October 1998	:	
Priority Date: 3 October 1997	:	NOTIFICATION OF
For: ENDOSCOPE WITH SINGLE-USE	:	
CARTRIDGE FOR THE INVAGINATION	:	ABANDONMENT
OF ENDOSCOPIC TUBE	:	

The above identified application is before the PCT Legal Office on questions arising under 35 U.S.C. 371.

**BACKGROUND**

On 2 October 1998, applicant filed international application PCT/LV98/00006, which claimed priority of an earlier application filed 3 October 1997. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 15 April 1999. A Demand for international preliminary examination, in which the United States was elected, was filed on 29 April 1999, prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 3 April 2000.

On 27 March 2000, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied by, *inter alia*: an oath or declaration as required by 35 U.S.C. 371 (c)(4); and translation of the International Application into English as required by 35 U.S.C. 371(c)(2). The basic national fee required under 35 U.S.C. 371(c)(1) was purportedly sent in the form of a money order in Latvian currency.

**COMMUNICATION**

The application file does not contain the purported money order, but rather only a confirmation copy of the money order. In any event, even if the money order was received, it would be improper.

37 CFR § 1.23 (a) states:

All payments of money required for Patent and Trademark Office fees, including fees for the processing of international applications (§ 1.445), shall be made in U.S. dollars and in the form of a cashier's or certified check, Treasury note, or United States Postal Service money order. If sent in any other form, the Office may delay or cancel the credit until collection is made. Checks and money orders must be made payable to the Commissioner of Patents and Trademarks. Payments from foreign countries must be payable and immediately negotiable in the United States for the full amount of the fee required. Money sent by mail to the Office will be at the risk of the sender, and letters containing money should be registered with the United States Postal Service.

For this reason the above-identified application was **ABANDONED** on 3 April 2000 for failure to pay the full basic national fee in U.S. dollars, in the proper form, within 30 months of the priority date.

### **RECOMMENDATION**

Applicants may wish to consider filing a petition to the Commissioner under 37 CFR 1.137(a) or (b) requesting that the application be revived. Any petition filed under 37 CFR 1.137 (a) and/or a petition under 37 CFR 1.137(b) requesting that the application be revived must meet the criteria indicated in the recent revision of 37 CFR 1.137. See 62 Fed. Reg. 53131 (October 10, 1997); 1203 Off. Gaz. Pat. Office 63 (October 21, 1997) (Effective Date: 01 December 1997).

Under 37 CFR 1.137(a), a petition requesting that the application be revived on the grounds of unavoidable delay must be filed promptly after applicant becomes aware of the abandonment and such petition must be accompanied by: (1) an adequate showing of the cause of unavoidable delay; (2) a proper reply; (3) the petition fee required by law and (4) a terminal disclaimer and fee in all applications filed before 08 June 1995.

Under 37 CFR 1.137(b), a petition requesting that the application be revived on the grounds of unintentional delay must be accompanied by: (1) a proper reply; (2) the petition fee required by law; (3) a statement that the "entire delay in filing the required reply from the due date for the reply to the filing of a grantable petition pursuant to this paragraph was unintentional" and (4) any terminal disclaimer and fee required pursuant to 37 CFR 1.137(c). The Commissioner may require additional information where there is a question as to whether the delay was unintentional. The petition fee required by law is \$1210.00 for a large entity and \$605.00 for a small entity.

The filing of any petition under the unintentional standard cannot be intentionally delayed. A person seeking a revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay was unintentional. A statement that the delay was unintentional is not appropriate if the petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b). There are three periods to be considered during the evaluation of a petition under 37 CFR 1.137(b): (1) the delay in the reply that originally resulted in the abandonment; (2) the delay in filing the initial petition under 37 CFR 1.137 to revive the application and (3) the delay in filing a grantable petition under 37 CFR 1.137 to revive the application. See 62 Fed. Reg. 53131 (October 10, 1997); 1203 Off. Gaz. Pat. Office 63 (October 21, 1997) (Effective Date: 01 December 1997).

This recommendation to file a petition under 37 CFR 1.137(a) or (b) should not be construed as an indication as to whether or not any such petition(s) will be favorably considered.

Any further correspondence with respect to this matter should be addressed to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, with the contents of the letter marked to the attention of the PCT Legal Office.



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